

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Acceleration of Broadband Deployment)	WC Docket No. 11-59
Expanding the Reach and Reducing the Cost of)	
Broadband Deployment by Improving Policies)	
Regarding Public Rights of Way and Wireless)	
Facilities Siting)	

REPLY COMMENTS OF THE CITY OF ONTARIO, CALIFORNIA

The City of Ontario, California (the “City”) files these reply comments in the above-captioned proceeding.

I. PCIA MISCHARACTERIZES THE CITY’S CO-LOCATION REVIEW PROCESS

PCIA includes the City of Ontario on its list of jurisdictions that allegedly require applicants for co-locations to go through a full zoning review and hearing and obtain a variance or special use permit for each new co-location on a tower, regardless of the status of the existing tower.¹ Quite simply, this is inaccurate. In fact, the City has actively promoted wireless deployments for more than two decades. The City’s Development Code was amended in 2001 specifically to address deployments of antennas and wireless telecommunications facilities, and the City has approved every single wireless application presented since then (more than 87 cell

¹ *In the Matter of Acceleration of Broadband Deployment Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, MB WC Docket No. 11-59, Comments of PCIA – The Wireless Infrastructure Association and the DAS Forum (A Membership Section Of PCIA) (July 18, 2011) (“PCIA’s Comments”), Exhibit B, 7.

sites), with no denials and no appeals, bringing the total number of cell sites in the City to more than 121.²

The City actively encourages co-locations through its Development and Design Guidelines and Standards for wireless communications facilities. The Guidelines state that “Wireless Communications Facilities should... be co-located with another facility, where possible[.]”³ Further, the Guidelines ensure that providers design their facilities to accommodate future co-locations, by providing: “All proposed non-stealth facilities shall be designed to accommodate co-location of two (2) or more service providers. To the extent possible stealth facilities shall be designed to accommodate co-location as well.”⁴ In addition, all applicants for wireless communications facilities approvals are required to investigate the feasibility of co-locating on an existing facility.⁵

The City’s has a streamlined permitting process that also encourages co-locations. As set out in Section 9-1.3289(A) of the City’s Development Code, and summarized in our initial filing, the City has three possible tiers of review for wireless communications facilities applications – Tier 1 Building Department Plan Check Review; Tier 2 Development Advisory Board Review; and Tier 3 Planning Commission Review. Tier 2 review and approval is all that is needed for a wireless communications facility if “[t]he facility is co-located on an existing site in an Industrial or Commercial zone and the facility meets all current development standards of this section and

² *In the Matter of Acceleration of Broadband Deployment Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, MB WC Docket No. 11-59, Comments of the City of Ontario, California (July 18, 2011) (“Ontario’s Comments”), 3.

³ Ontario Municipal Code (“OMC”), Section 9-1.3289(F)(1)(i).

⁴ OMC Section 9-1.3289(F)(6).

⁵ OMC Section 9-1.3289(B)(2).

of the application zone.”⁶ Further, certain facilities, including certain roof-mounted facilities may be reviewed through the Tier 1 plan check process.⁷ Tier 3 review of a wireless facility co-location application (which would require a hearing) is triggered only if the application does not meet the criteria for Tier 1 or Tier 2 review.

Thus, quite contrary to PCIA’s claim, a full zoning review and hearing and a variance or special use permit *is not required* for each new co-location on a tower in Ontario, regardless of the status of the existing tower. In fact, the majority of the co-location sites approved by the City have been processed under Tier 1 or Tier 2 review.

II. THE CITY STRONGLY SUPPORTS THE NATIONAL ASSOCIATIONS’ COMMENTS OPPOSING FEDERAL REGULATION OF LOCAL RIGHTS OF WAY AND WIRELESS SITING

The City, based on its own experiences, joins with the National Associations in opposing new federal regulations, or “clarifications” of law requested by industry commenters. There is no need for them. The National Associations submitted studies in their initial filing showing that local practices or charges with respect to right of way access, or wireless siting do not delay broadband deployment or adoption.⁸ The PCIA submitted no such studies, and if the misstatements made about the City are representative of the “evidence” being offered by industry to support claims that local governments are a “barrier” to broadband deployment, then there is

⁶ OMC Section 9-1.3289(A)(2)(vi).

⁷ OMC Section 9-1.3289(A)(1).

⁸ *In the Matter of Acceleration of Broadband Deployment Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, MB WC Docket No. 11-59, Comments of the National League of Cities, the National Association of Counties, the United States Conference of Mayors, the International Municipal Lawyers Association, the National Association of Telecommunications Officers and Advisors, the Government Finance Officers Association, the American Public Works Association, and the International City/County Management Association (July 18, 2011).

simply no credible basis for federal action. A second reason we support the National Associations' Comments is we strongly believe it would be inappropriate, unnecessary and potentially disruptive and dangerous for the Commission to substitute rules and models of the Commission's own making for the ones successfully implemented by the City. As indicated in our initial comments in this proceeding, the City strongly supports and shares the Commission's goal of accelerating broadband deployment. However, deployments must also be consistent with the community values important to the City and its residents.

In its initial comments, the City mentioned a couple of examples where a careful balancing of competing interests may be required. One is when the City makes significant investments to establish a neighborhood with a particular design aesthetic, such as with decorative street lights, for purposes of economic development. To require us to allow antennas to be attached to those street light poles may disrupt a landscape the City and its citizens spent substantial funds to create, effectively undoing that economic investment to the detriment of the community. A second example is when a cell antenna is allowed to be attached to a traffic signal pole. The traffic signal equipment might be disturbed during future maintenance. This can cause the malfunction of a traffic signal or a change in signal timing, which will become a potential safety hazard and create liability issues for the City. The City's efforts to accommodate new providers and new technologies are designed to meet local needs and conditions in Ontario. That approach best serves the local community and providers.

Mandatory federal regulation of these local matters is not what our federal system envisions. Thus, the City strongly supports the National Associations in their call for the Commission to defer in these local deployment matters to the experts – the local governments – and to focus Commission efforts on other areas more appropriate for national policy action such

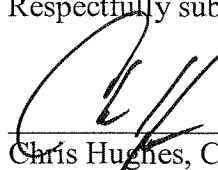
as broadband literacy, barriers to broadband adoption, and broadband deployment in rural areas, to name a few.

CONCLUSION

Local right-of-way and facility management processes and charges are not impeding broadband deployment. There is certainly no evidence that Ontario's policies have prevented any company from providing broadband service in our community. In fact, the City has welcomed and been very responsive to new technologies and new broadband deployments. There are many reasons to believe that federal regulations would prove costly and disruptive to our community, and stifle our efforts to develop innovative and flexible processes.

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Respectfully submitted,



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